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Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination, the Arab Lawyers Union, the Arab Organization for Human Rights, International-Lawyers.Org, IUS PRIMI VIRI International Association and the Union of Arab Jurists, non-governmental organizations in special consultative status, and International Educational Development, Inc. and the World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Forcible Repatriation of Rohingya: Disregard to the International Prohibition of Refoulement*

The situation of Rohignya Muslim minority of Myanmar remains encreasingly alarming. The mass atrocities against Rohingya continue to these days despite the international calls for immediate halt of violence. As a result of army crackdowns in Myanmar's northern Rakhine state in 2016 and 2017, approximately 750,000 Rohingya fled to Bangladesh. The UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, referred to the abuses and persecution as "textbook example of ethnic cleansing". The widespread, systemic, organised discrimination and criminal acts committed against Rohingya with an obvious intent to destroy this group may amount to the international crime of genocide. The persecution of this ethnic group since 1982 in combination with hatred rhetoric and widespread violence against them since 2012 fulfil the elements of genocide as defined by the Rome Statute of the International Criminal Court and the Genocide Convention.

On 16 November 2017, the governments of Bangladesh and Myanmar signed repatriation agreement, according to which the Rohingya refugees in Bangladesh will be repatriated back within two years. It is estimated that nearly 1 million Rohingya live in Bangladesh, including those who came after previous displacements. It is reported that Myanmar has agreed to accept 1,500 Rohingya each week (300 persons every day), though Bangladesh insisted on 15,000 every week. The agreement covers Rohingya who fled to Bangladesh following the attacks in October 2016 and August 2017. Myanmar said that the deal was based on repatriation pact of 1992-1993 between the two countries that followed a previous round of violence. The permanent secretary of Myanmar's ministry of labour, immigration and population, Myint Kyaing, said his country would accept people with identity documents issued by government in the past. Refugees would have to fill in forms with names of family members, previous addresses in Myanmar, birth dates and a statement of voluntary return.

It is unclear if refugees would be forced to return against their will from camps in Bangladesh to so called "temporary accomadation", which will most likely be prison-like camps in Myanmar that Rohignyas have already experienced during the past returns. Both countries affirm that the repatriation will be voluntary. However, Rohingya refugees are very clear that they will return to Myanmar only if their safety is assured by the international community, their lands returned and houses rebuilt, if they are granted Myanmar citizenship and no longer subject to discrimination and persecution. These conditions are not in place in Myanmar. Moreover, Rohingya refugees were not consulted whatsoever throughout the planning of their return. Bangladesh agreed to repatriate refugees back to the state-sponsored system of apartheid that is still in place in Myanmar.

Refoulement is an absolute prohibition under international human rights and refugee law. The most essential component of the principle of non-refoulement is to protect refugees and asylum seekers againt return to a country where a person has reason to fear persecution or risk to his life. The prohibition of forced repatriation is set forth by the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Convention Relating to the Status of Refugees. Eventhough, neither Bangladesh nor Myanmar ratified the conventions on refugees, the protection of non-refoulement provisions are considered absolute rights and international custom. Forcible return is a violation of international law.

The repatriation deal between Bangladesh and Myanmar is not fully formed and may bring more human rights violations against the Rohingya minority. Firstly, the main condition that must be met before any repatriation plan is implemented - an unconditional end to the violence and guarantees of non-recurrence. At the special session of the UN Human Rights Council on 5 December 2017, the Chair of the Fact-Finding Mission on Myanmar, confirmed that "while there are signs that the violence has abated in Rakhine, it has not stopped." It was reported that villages were still being burned in Maungdaw and Buthidaung townships as recently as 25 November. "At present, conditions in Myanmar's Rakhine state are not in place to enable safe and sustainable returns. Refugees are still fleeing, and many have suffered violence, rape, and deep psychological harm," said Adrian Edwards, a spokesperson for the office of the UN High Commissioner for Refugees (UNHCR). Moreover, the Commander-in-Chief of the Myanmar Armed Forces, General Min Aung Hliang, gave clear message that the crackdown would not ease off as it was "unfinished business from

WWII".1 Bangladeshi officials spoke of a need to establish "safe zones" inside Myanmar. The world witnessed past unfortunate experiences of so called safe-zones in other conflicts – for example, Bosnia-Herzegovina (1993) and Sri Lanka (2009). Therefore, this suggestion is hardly an option.

Secondly, we are seriously concerned that refugees and international agencies, including the UN, are excluded from all stages of this repatriation. Rohingya should play a key role in planning and management of their return. In addition, there is a need for international and UN oversight of any repatriation process. UN refugee agency's role was not included in this bilateral repatriation plan. Since the current repatriation deal affords no role for the UN refugee agency, it casts serious doubts if international standards would be observed during this process. The affirmation that this return should be settled exclusively between the government of Myanmar and Bangladesh due to sovereignity notion is unacceptable. The United Nations General Assembly has recognized that if states fail in their duty to protect the security of individuals, it becomes a wider regional, and ultimately international obligation. Thirdly, the required verification process is contentious. The Myanmar authorities denied the Rohignya citizenship and deprived them of other possibilities to prove their identity for decades. In these circumstances, it is unreasonable to expect Rohingya refugees to present the nessecary documents for voluntary repatriation.

Lastly, we are mindfull of previous repatriations of tens of thousands of Rohingyas to Myanmar in the 1990s and early 2000s. "An estimated 240,000 Rohingyas were repatriated by the Bangladesh government under the 1978 agreement, which had a six-month time limit. After that, Bangladesh repatriated about 236,000 Rohingyas until 2005 under the 1992 agreement," noted President Zafar Ahmad of Myanmar Ethnic Rohingya Human Rights Organization.2 These large-scale repatriation operations with the UNHCR's assistance have returned Rohingya to experience a repetition of discrimination and violence against them. At the time, rights groups raised concern that people were forced back against their will and the UN was sidelined during that process. As documented by UNHCR in the early 1990s, less than ten percent of Rohingya surveyed at the time expected to return to safe conditions in Myanmar. However, Bangladesh pushed them back across the border despite all the refugees' efforts against repatriation. Those displacement camps established for mainly Rohignya returnees became the open-air prisons of deplorable conditions with limited freedom of movement and restricted access to international aid agencies.

RECCOMENDATIONS

- We call for the UN to further insist that Myanmar accedes without delay or reservation to key international human rights treaties and their additional protocols, including to the International Covenant on Civil and Political Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Convention Relating to the Status of Refugees, the Rome Statute of the International Criminal Court and implement their provisions in law, policy and practice;
- We call on Myanmar to implement without delay all of the relevant provisions included in the HRC Resolution A/HRC/S-27/L.1 and the recommendations of the Advisory Commission on Rakhine State aimed at improving the human rights situation and ending discrimination;
- Myanmar should immediately repeal discriminatory legislative and policy measures targeting religious and ethnic minorities, lift restrictions on movement that impede access to health and education services, intensify its efforts to address discrimination, to counter incitement to hatred and hate speech leading to violence and it should enact legislation and implement policies to grant Rohingya the Myanmar nationality;

1 *"Myanmar Says Clearing of Rohingya Is Unfinished Business From WWII"*, September 2017 at *https://www.wsj.com/articles/myanmar-army-chief-defends-clearing-rohingya-villages-1504410530*

2 *"Rohingya must be consulted before repatriation"*, *Adam Bemma, 25 November 2017 at http://www.aljazeera.com/news/2017/11/rohingya-consulted-repatriation-groups-171125094810411.html*

- Myanmar should ensure safe, voluntary and sustainable return of refugees to their place of origin in accordance with international standards;
- Myanmar should grant full access to the UN fact-finding mission and international humanitarian aid workers, observers and journalists to conflict areas, especially Rakhine State;
- UN should ensure that Rohingya refugees are not forced back to Myanmar as long as they remain at risk of serious human rights violations. Repatriation should take place under the supervision of international and national human rights monitors and the relevant UN agencies;
- The situation in Myanmar should be referred to the International Criminal Court.

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*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association-UK, The Brussells Tribunal, Euro-Mediterranean Human Rights Monitor, Association of Humanitarian Lawyers (AHL), The Iraqi Commission for Human Rights (ICHR), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, International Anti-Occupation Network (IAON), NGOs without consultative status, also share the views expressed in this statement.